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April 9, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Preemption of Nongovernmental Restrictions on
Satellite Earth Stations, IB Docker No. 95-59

I would like to **CONGRATULATE** the FCC for developing their Report and Order and Further Notice of Proposed Rulemaking released March 11, 1996 regarding preemption of certain local regulation of satellite earth stations antennas and proposing to prohibit enforcement of nongovernmental restrictions on such antennas that are less than one meter in diameter (the "FNPRM"). **BUT**, while congratulations are in order, **SHAME ON THE FCC** for not seeing the big picture. Enclosed are six (6) copies of this letter, in addition to this original.

As a member of the Board of Directors of a neighborhood homeowners association I congratulate the FCC's effort to place no restrictive covenant, encumbrance, homeowners association rule, or other nongovernmental restriction which shall be enforceable to the extent that it impairs a viewers ability to receive video programming services over a satellite antenna less than one meter in diameter. While our homeowners association does have restrictions regarding satellite antennas, I lead the charge to exempt "small" satellite antennas from needing the architectural committee's approval as long as such installation met with the city's codes. It is my

Very truly yours,
[Signature] 046



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belief that wireless technology is the technology of the future and that all homeowners should have access to this technology without restrictions from nongovernmental authorities.

However, while the FCC's action enhances homeowner's property rights and allows access to this technology via small (less than one meter in diameter) satellite antennas, the FCC failed to see the "Big Picture" and the effect this rule, as written, may have on commercial properties. As a principle, officer, and property manager for a small commercial property management company whose annual revenues are less than \$3,000,000.00, and whose portfolio includes medical office buildings, general office buildings, shopping centers, and parking garages, I am concerned that should this rule preempt Owners and/or property managers from developing regulations regarding satellite antennas and prohibit enforcement of restrictions on such antennas, then, while the FCC acknowledged homeowner's rights, the FCC has ignored the property rights of Owners of commercial properties.

I am very concerned that the proposed rule prohibiting enforcement of nongovernmental restrictions could very well adversely affect the conduct of Owners and/or property managers of commercial properties without justification and needlessly raise additional legal issues if said rule is interpreted whereby Owners and/or property managers of commercial properties are deemed to be nongovernmental authorities and thus do not have the right to impose regulations or enforce restrictions regarding satellite antennas. I question whether the FCC has the authority to disregard the property rights of Owners of commercial property by requiring us to allow the physical invasion of our property. It is imperative that we retain the authority to control the use of our property for several reasons.

1. SAFETY & SECURITY:

A building owner and/or manager must be able to control who has access to the roof, cable trays, and communication rooms. Without this control anyone could enter these areas installing improper materials, cause damage to equipment belonging to others, and/or cause disruption to other building services such as telephone, electrical, and heating, ventilation, and air conditioning. In order to

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provide adequate security for a building's tenants and equipment, a building owner and/or manager, must know who is working in the building, where they are working, what they are doing and what materials they are using, when they will be finished, and to make sure that the area is secure upon completion.

2. STRUCTURAL CONDITIONS:

A building owner and/or manager must control what occurs in and on his buildings. Indiscriminate placement of antennas on the exterior of a building may cause structural hazards. Antennas mounted directly on a wall will require the drilling of holes. If these holes are improperly sealed water will seep into said holes which can cause structural deficiencies. This water seepage can cause major damage including, but not limited to, expansion, corrosion of metal mounting elements, seepage into the interior of a building, or weakening of stucco or concrete through chemical reaction with substances carried in by the water. Roof damage caused by negligence or heavy use could also contribute to water leakage. The Florida environment contributes to several other concerns such as indoor air quality due to mold and mildew which could result from water seepage, and the antennas wind load factors - will Florida winds blow off the antenna causing damage to the building and/or individuals. All of these possibilities will create new maintenance and repair costs and raise real safety concerns.

3. TENANT UNREST:

The technical limitation of satellite technology will create management problems because not all tenants may be able to receive certain services. When tenants on the south side of a building start subscribing to DBS, but tenants on the north side cannot because there is no place to position an antenna to receive the signal, we will have to deal with the complaints. Building owners and/or managers will be powerless to address this situation resulting in increased costs as angry tenants place additional demands on management or move to other buildings resulting in vacant space and thus loss rent.

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4. MARKETABILITY:

While the FNPRM states that nongovernmental restrictions would appear to be directed to aesthetic considerations may be true in residential subdivisions, it is not true for commercial properties. While aesthetic considerations are not trivial for commercial properties as the appearance of a building directly affects its marketability, aesthetic considerations are by no means the only concern. As stated above concerns regarding safety and security, structural integrity, and tenant relations are building owners and/or managers major concerns.

SUMMARY:

While we congratulate the FCC for forming rules which will allow homeowners to install small satellite antennas without interference from nongovernmental authorities, we urge the FCC to avoid interfering in our relationships with our tenants and recognize the negative circumstances that would be created should this rule be interpreted whereby commercial owners and/or property managers would be considered nongovernmental authorities covered by this rule. All of the potential problems cited in this letter would have a direct affect on our bottom line and our property rights. We request that this rule be revised to specifically exclude commercial properties: apartments, shopping centers, office buildings, and office/warehouse facilities.

Thank you for this opportunity to comment on this proposed rule. I hope the Commission will seriously consider my concerns.

Sincerely,



David Meyers, CPM
Vice President